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MONTANA LEGISLATIVE HISTORY

Chapter 523 19 99

Bill H 374 S _____ Original bill & history ✓C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) 1/25	✓C	Hearing Date(s) 3/23	✓C
_____	___C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out _____	___C		

House
Free Conference Comm 4/15 ✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

3/24	Chapter Number Assigned Chapter Number 138 Effective Date: 10/01/1999 - All Sections		

HB 374 Introduced by Hurdle, et al. *LC0492 Drafter: MacMaster*

Require That the District Court Hold a Hearing Before Making its Decision That a Youth Should Be Tried as an Adult;...

1/25	Introduced and 1st Reading		
1/25	Referred to Judiciary		
1/29	Hearing		
2/08	Committee Executive Action--Bill Passed as Amended	14	6
2/09	Committee Report--Bill Passed as Amended		
2/11	2nd Reading Passed	64	35
2/12	3rd Reading Passed	73	26
	Transmitted to Senate		
2/22	Referred to Judiciary		
3/23	Hearing		
3/24	Committee Executive Action--Bill Concurred as Amended	7	1
3/24	Committee Report--Bill Concurred as Amended		
3/27	2nd Reading Concurred	49	0
3/27	3rd Reading Concurred	43	5
	Returned to House with Amendments		
4/13	2nd Reading Senate Amendments Not Concurred	92	8
4/13	Free Conference Committee Appointed		
4/15	Hearing		
4/15	Free Conference Committee Report Received		
4/20	2nd Reading Free Conference Committee Report Adopted	95	2
4/21	3rd Reading Free Conference Committee Report Adopted	85	15
	Senate		
4/14	Free Conference Committee Appointed		
4/15	Free Conference Committee Report Received		
4/16	2nd Reading Free Conference Committee Report Adopted	50	0
4/17	3rd Reading Free Conference Committee Report Adopted	44	5
4/21	Sent to Enrolling		
4/22	Returned from Enrolling		
4/22	Signed by Speaker		
4/23	Signed by President		
4/26	Transmitted to Governor		
4/30	Signed by Governor		
5/04	Chapter Number Assigned Chapter Number 523 Effective Date: 10/01/1999 - All Sections		

HB 375 Introduced by Brainard *LC0869 Drafter: B. Campbell*

Require Municipalities to Reimburse Rural Fire Districts for the Tax Loss and to Reimburse Fire Service Areas for the Rate Loss Resulting to the District or Area When the Municipality Annexes a Portion of the District or Area;...

1/25	Introduced and 1st Reading
1/25	Referred to Local Government
2/09	Hearing

House BILL NO. 374

INTRODUCED BY Hurdle P. Clark
(Primary Sponsor)
D. Gebhardt Williams

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING FROM THE DISTRICT COURT TO THE YOUTH COURT THE AUTHORITY TO DECIDE IF A YOUTH WILL BE TRIED AS AN ADULT IN THE DISTRICT COURT UPON PETITION OF THE COUNTY ATTORNEY; REQUIRING THAT THE YOUTH COURT HOLD A HEARING BEFORE MAKING ITS DECISION; ALLOWING THE USE OF A CONSENT DECREE FOR A YOUTH IN A YOUTH COURT PROCEEDING IN WHICH THE YOUTH IS CHARGED WITH A SECOND OR SUBSEQUENT FELONY OR A THIRD OR SUBSEQUENT MISDEMEANOR; ABOLISHING THE DEATH PENALTY FOR OFFENDERS LESS THAN 18 YEARS OF AGE; AND AMENDING SECTIONS 41-5-206, 41-5-1501, 45-5-102, AND 45-5-503, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-206, MCA, is amended to read:

"**41-5-206. Filing in district court prior to formal proceedings in youth court.** (1) The county attorney may, in the county attorney's discretion, file with the ~~district~~ youth court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103; or

(iv) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated or felony assault as defined in 45-5-202;

(iv) robbery as defined in 45-5-401;

(v) burglary or aggravated burglary as defined in 45-6-204;

(vi) aggravated kidnapping as defined in 45-5-303;

(vii) possession of explosives as defined in 45-8-335;

(viii) criminal sale of dangerous drugs as defined in 45-9-101;

(ix) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(x) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through ~~(1)(b)(x)~~ (1)(b)(xi);

(xi) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403.

(2) The county attorney shall file with the ~~district~~ youth court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The ~~district~~ youth court shall grant leave to file the information in district court if the youth court finds, after a hearing, that there is probable cause to believe that the youth has committed the alleged offense, ~~and~~ that~~, considering the seriousness of the offense and in the interests of community protection,~~ a youth court proceeding and disposition will not serve the interests of community protection and the best interests of the youth, and that the case should be filed in the district court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the ~~district~~ youth court ~~judge~~. The youth court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of ~~any of the offenses~~ an offense enumerated in

subsection (1) and is sentenced to the state prison, the commitment must be to the department of corrections. The department shall confine the youth in ~~whatever~~ an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) A youth whose case is filed in the district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical separation as well as sight and sound separation from adults accused or convicted of criminal offenses."

Section 2. Section 41-5-1501, MCA, is amended to read:

"**41-5-1501. Consent decree with petition.** (1) (a) Subject to the provisions of subsection (2), after the filing of a petition under 41-5-1402 and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the ~~child~~ youth under supervision under this section is known as a "consent decree". Except as provided in subsection (1)(b), the procedures used and dispositions permitted under this section must conform to the procedures and dispositions specified in 41-5-1302 through 41-5-1304 relating to consent adjustments without petition and the responsibility of the youth's parents or guardians to pay a contribution for the costs of placement in substitute care.

(b) A youth may be placed in detention for up to 10 days on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter.

(2) A consent decree under this section may not be used by the court unless the youth admits guilt for ~~any charges~~ a charge of an offense set forth in the petition and accepts responsibility for the youth's actions.

(3) If the youth or the youth's counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(4) If, either prior to discharge by probation services or expiration of the consent decree, a new

petition alleging that the youth is a delinquent youth or a youth in need of intervention is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition must be continued to conclusion as if the consent decree had never been entered.

(5) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition must be dismissed with prejudice. This subsection does not preclude a civil suit against the youth for damages arising from the youth's conduct.

(6) ~~In all cases in which~~ If the terms of the consent decree extend for a period in excess of 6 months, the probation officer shall at the end of each 6-month period submit a report that must be reviewed by the court.

~~(7) A consent decree with petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if that offense would be a felony if committed by an adult or third or subsequent offense if that offense would be a misdemeanor if committed by an adult.~~"

Section 3. Section 45-5-102, MCA, is amended to read:

"**45-5-102. Deliberate homicide.** (1) A person commits the offense of deliberate homicide if:

(a) the person purposely or knowingly causes the death of another human being; or

(b) the person attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, felony assault, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, the person or any person legally accountable for the crime causes the death of another human being.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, unless the person is less than 18 years of age, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-219 and 46-18-222."

Section 4. Section 45-5-503, MCA, is amended to read:

"**45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age; or

(ii) punished as provided in 46-18-219.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on January 29, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Brad Molnar (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s): HB 374, HB 371,
Date Posted: 1/27/1999
Executive Action: HB 380 & SB 24 Tabled

HB 382-Do Pass
SB 20-Be concurred in as amended

HEARING ON HB 374

Sponsor:

Rep. Hurdle presented HB 374.
{Tape : 1; Side : A; Approx. Time Counter : 29 - 63}

Proponents:

Sandy Oitzinger, Montana Juvenile Probation Officers Association
{Tape : 1; Side : A; Approx. Time Counter : 63 - 91}
Roberta Drew, Juvenile Public Defender, Billings
{Tape : 1; Side : A; Approx. Time Counter : 91 - 117}
Debbie Waddell, Montana Association of Churches
{Tape : 1; Side : A; Approx. Time Counter : 117 - 168}
Sharon Hoff, Montana Catholic Conference
{Tape : 1; Side : A; Approx. Time Counter : 168 - 187}
Jane McCall, Youth Justice Council
{Tape : 1; Side : A; Approx. Time Counter : 187 - 204}

Opponents:
None

Informational Testimony:

Allen Horsfal, Board of Crime Control
{Tape : 1; Side : A; Approx. Time Counter : 204 - 348}

Questions from Committee Members and Responses:
{Tape : 1; Side : A; Approx. Time Counter : 348 - 550}
{Tape : 1; Side : B; Approx. Time Counter : 0 - 128}
EXHIBIT(1)

Closing by Sponsor:

Rep. Hurdle made closing statements.
{Tape : 1; Side : B; Approx. Time Counter : 128 - 146}

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 23, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)

Members Excused: Sen. Walter McNutt (R)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 244, HB 339, HB 374, HB 527, 3/20/1999
Executive Action: HB 115, HB 203, HB 244, HB 257, HB 308, HB 374, HB 382, HB 396

HEARING ON HB 374

Sponsor: **REP. JOAN HURDLE, HD 13, Billings**

Proponents: **Allen Horsfall, Montana Board of Crime Control**
Sharon Hoff, Montana Catholic Conference
Al Smith, Citizen - Montana Abolition Coalition

Opponents: None

Opening Statement by Sponsor:

REP. JOAN HURDLE, HD 13, Billings, introduced HB 374 which makes several changes to the Youth Court Act. It requires that juveniles be afforded a hearing before they are tried as adults. Currently, they are simply transferred from juvenile court to adult court based on the severity of their crime. The county attorney automatically files a case of severe crime in the district court. Since this is too automatic, this bill requires that juveniles be afforded a hearing. The hearing needs to take place in district court because the direct file is connected to funding received by the Board of Crime Control.

The hearing involves a determination of public safety and also whether or not the needs of the juvenile offender can best be met in district court or by the youth court. An amendment is being offered which concerns crimes for which a youth may be at risk for the death penalty when tried in district court. When the subject of executing youth under 18 was brought up at a meeting of juvenile probation officers, there was utter silence. She believes the silence was directed at the idea that it could be legally possible to execute someone under 18. This was changed to age 16 in the House Judiciary Committee in an attempt to fold in another bill sponsored by **REP. LOREN SOFT.** This bill would have prohibited execution of mentally retarded persons. The only part that was folded into this bill was the provision involving a youth of age 16. She asked that this bill be restored to it's original form of 18 years of age.

{Tape : 1; Side : A; Approx. Time Counter : 9.13}

Proponents' Testimony:

Allen Horsfall, Montana Board of Crime Control, explained that he has been informed by the federal government that if the direct file is handled wherein the county attorney may file directly into district court, that particular grant would not be in jeopardy in this state. This grant amounts to $1.722 million for juvenile justice programs.

Sharon Hoff, Montana Catholic Conference, raised a concern regarding the age of execution of youth. She urged the Committee to adopt the amendment mentioned earlier. While there is no excuse for some of the crimes that happen, there are always mitigating circumstances and issues in their lives that may have pushed them to that point. Sixteen is a very young age to be sentenced to death and then having to spend twenty years on death

row before execution. We need to find ways to hold children accountable and yet remember that they are children.

Al Smith, Citizen - Montana Abolition Coalition, rose in support of the amendments offered. The original intent of the bill provided for 18 to be the age provided for in the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HALLIGAN asked for more information on the discussion in the House Committee where age 18 was changed to age 16. **REP. HURDLE** explained that the sole purpose was to fold in **REP. SOFT'S** bill which provided for youth age 16 or mentally retarded. The bills were not melded together but HB 374 did retain the age 16 provision.

SEN. BARTLETT asked why the bill was not folded into HB 374. **REP. HURDLE** responded that the concept of mentally retarded did not fit into HB 374. She was not in the meeting when HB 374 was passed out of Committee with the age 16 concept still in the bill.

Closing by Sponsor:

REP. HURDLE summarized that since 1976 there have been twelve men executed for crimes they committed as juveniles. The average length of stay on death row for those men was over twelve years. All had committed crimes at age 17. Montana is one of only a few states which allow youths to be executed in this fashion. It is very appropriate for this provision to be changed.

{Tape : 1; Side : A; Approx. Time Counter : 9.20}

HEARING ON HB 527

Sponsor: REP. HAL HARPER, HD 52, Helena

Proponents: Steve Browning, Anheuser Busch
Brenda Nordlund, Department of Justice
William Shear, Rocky Mountain Interlock Devices

Opponents: Lucas Foust, Lewis and Clark County Public Defenders Office

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

CONFERENCE

Call to Order: By **CHAIRMAN JOHN BOHLINGER FOR SENATOR BISHOP** who was in another committee meeting that was running late but arrived during this meeting, on April 15, 1999 at 9:00 A.M., in Room 420 Capitol.

ROLL CALL

Members Present:
Sen. Al Bishop, Chairman (R)
Sen. John Bohlinger (R)
Sen. Sue Bartlett (D)
Rep. Cindy Younkin (R)
Rep. Joan Hurdle (D)
Rep. Mark Noennig (R)

Members Excused: None.

Members Absent: None.

Staff Present: John McMaster, Legislative Services
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 374, 4/14/1999
Executive Action: HB 374

CONFERENCE COMMITTEE ACTION ON HB 374

Rep. Hurdle described the intent of the bill, gave a history of the bill and informed the committee on why this hearing is important regarding the youth court and "youth's interests (being) better served".
{Tape : 1; Side : A; Approx. Time Counter : 7 - 18}

Rep. Hurdle presented amendments to **HB 374.**

EXHIBIT(1)

Discussion:
{Tape : 1; Side : A; Approx. Time Counter : 18 - 110}

Tammy Playable, Assist. Attorney General office explained and commented on the **Baxter** case that was recently acted upon by the Supreme Court and how it effects this bill. There was also much discussion with **Rep. Nonage** and **John MacMaster** regarding their interpretation of the **Baxter** case and the amendments regarding this bill.
{Tape : 1; Side : A; Approx. Time Counter : 110 - 207}

Gene Kiser, Montana Board of Crime Control and responded to Rep. Nonage. **Kiser** also passed out an exhibit that explained where the allocated funds are distributed.
{Tape : 1; Side : A; Approx. Time Counter : 207 - 229}
EXHIBIT(2)

Motion/Vote: **Rep. Hurdle** moved that **HB 374 BE AMENDED. Motion carried 5-0.**
(Sen. Bishop absent during this vote)
{Tape : 1; Side : A; Approx. Time Counter : 229 - 252}

Senator Bohlinger now addressed the issue of the "death penalty" and the age of 18 that is now part of Senate's amendment. **Senator Bohlinger** stated that it is "terribly important that we abolish the death penalty for people that are less than 18 as stated in the Senate's amendments."

Discussion: **Rep. Nonage** and **Rep. Hurdle** discussed the original bill and the age of 18. The House Judiciary committee heard the bill **Rep. Soft** that he had drafted a bill that would eliminate the death penalty for persons under 18 years of age with disability issues.
{Tape : 1; Side : A; Approx. Time Counter : 252 - 308}

Senator Bohlinger asked the committee if they were satisfied with the Senate's amendments. **Rep. Nonage** asked the question if at the time of capital offense it is important to define that it was then or at the time of sentencing; it was too vague previously.

Senator Bartlett: Moved that we **Adopt** the Conference Committee reports with the amendments previously approved.

At this time **Senator Bishop** arrived and requested the committee to inform him as to what had transpired during this meeting. **Senator Bartlett** explained what had been discussed and approved.
Motion/Vote: **carried 6-0.**

{Tape : 1; Side : A; Approx. Time Counter : 308 - 375}

Senator Bohlinger adjourned the meeting.